

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ALNYLAM PHARMACEUTICALS, INC.,)	
)	
)	
Plaintiff,)	C.A. No. 22-cv-335-CFC
)	(CONSOLIDATED)
v.)	
)	
MODERNA, INC., MODERNATX, INC., and MODERNA US, INC.,)	
)	
)	
Defendants.)	
)	
)	

[PROPOSED] CLAIM CONSTRUCTION ORDER

The Court, having considered the parties' briefing on claim construction (D.I. 95), and in accordance with the reasoning set forth during the claim construction hearing on August 9, 2023 (D.I. 115), and the Court's subsequent August 9, 2023 Order (D.I. 114), IT IS HEREBY ORDERED that the terms of U.S. Patent Nos. 11,246,933 (the "'933 Patent") and 11,382,979 (the "'979 Patent") set forth below are construed as follows:

Claim Term	Claim Number(s)	Construction
"cationic lipid"	All asserted claims of the '933 Patent	Plain and ordinary meaning, which is "a lipid that is positively charged or that may be protonated at physiological pH"
	All asserted claims of the '979 Patent	
"branched alkyl"	All asserted claims of the '933 Patent	"A saturated hydrocarbon moiety group in which one carbon atom

Claim Term	Claim Number(s)	Construction
	All asserted claims of the '979 Patent	in the group (1) is bound to at least three other carbon atoms, and (2) is not a ring atom of a cyclic group.”
“branched C ₁₀ -C ₂₀ alkyl”	All asserted claims of the '933 Patent	“A saturated hydrocarbon moiety group with 10 to 20 carbon atoms and in which one carbon atom in the group (1) is bound to at least three other carbon atoms, and (2) is not a ring atom of a cyclic group”
	All asserted claims of the '979 Patent	
“R ¹³ is a branched C ₁₀ -C ₂₀ alkyl”		“R ¹³ is a saturated hydrocarbon moiety group with 10 to 20 carbon atoms and in which one carbon atom in the group (1) is bound to at least three other carbon atoms and (2) is not a ring atom of a cyclic group.”

Further, the parties have agreed to the following constructions, as set forth in the Joint Claim Construction Brief (D.I. 95):

Term	Agreed Construction
“directly bonded”	“Covalently bonded without any intervening atoms”
“primary group”	“the head group and central moiety”
“optionally comprises a primary, secondary, or tertiary amine”	“may or may not contain an amine, where the amine may be primary, secondary, or tertiary”
“where the branching occurs at the α-position relative to the [biodegradable/ester] group”	“where the branching occurs at a carbon atom next to the [biodegradable/ester] group”
“nucleic acid”	“a molecule composed of nucleotides, including modified nucleotides”
“an RNA”	“comprising ribonucleic acid”

The construction of the term “head group” is held in abeyance until such time as this Court conducts an additional hearing as discussed during the August 9, 2023 hearing, if necessary.

MCDERMOTT WILL & EMERY LLP

/s/ Ethan H. Townsend

Ethan H. Townsend (#5813)
The Nemours Building
1007 North Orange Street, 10th Floor
Wilmington, DE 19801
Tel.: (302) 888-3911
ehtownsend@mwe.com

OF COUNSEL:

William G. Gaede, III
Anisa Noorassa
McDermott Will & Emery LLP
415 Mission Street, Suite 5600
San Francisco, CA 94105

Sarah Chapin Columbia
Sarah J. Fischer
McDermott Will & Emery LLP
200 Clarendon Street, Floor 58
Boston, MA 02116-5021

Ian B. Brooks
Timothy M. Dunker
McDermott Will & Emery LLP
500 N. Capitol Street NW
Washington, DC 20003

FARNAN LLP

/s/ Michael J. Farnan

Brian E. Farnan (#4089)
Michael J. Farnan (#5165)
919 N. Market Street, 12th Floor
Wilmington, Delaware 19801
Tel.: (302) 777-0300
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

OF COUNSEL:

Elizabeth M. Flanagan (#5891)
Brianna Lee Chamberlin
Cooley LLP
30 South 9th Street, 7th Floor
Minneapolis, MN 55402

W. Chad Shear (#5711)
Geoffrey D. Biegler
Cooley LLP
10265 Science Center Drive
San Diego, CA 92121

Elizabeth L. Stameshkin
Angela Madrigal
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304

Bhanu K. Sadasivan, Ph.D.
McDermott Will & Emery LLP
650 Live Oak Avenue, Suite 300
Menlo Park, CA 94025-4885

*Attorneys for Moderna, Inc.,
ModernaTX, Inc., and Moderna US,
Inc.*

*Attorneys for Plaintiff
Alnylam Pharmaceuticals, Inc.*

Dated: August 16, 2023

IT IS SO ORDERED this 21st day of August, 2023.



Chief Judge Colm F. Connolly